

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

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IN RE	)	MDL No. 1616
URETHANE ANTITRUST	)	
LITIGATION	)	Civil No. 2:04-md-1616-JWL-DJW
_____	)	
	)	
	)	<b>NOTICE OF CLASS ACTION</b>
	)	<b>SETTLEMENT WITH CHEMTURA,</b>
This Document Relates To:	)	<b>NOTICE OF FAIRNESS HEARING,</b>
The Polyester Polyol Cases	)	<b>AND PROOF OF CLAIM FORM</b>
_____	)	

**TO: ALL PERSONS AND ENTITIES IN THE UNITED STATES WHO DIRECTLY PURCHASED ALIPHATIC POLYESTER POLYOLS, ALIPHATIC POLYESTER POLYMERS AND PREPOLYMERS, AND ALIPHATIC POLYESTER-BASED POLYURETHANE SYSTEMS (“POLYESTER POLYOL PRODUCTS”) AT ANY TIME DURING THE PERIOD FROM JANUARY 1, 1998 THROUGH AUGUST 16, 2006 FROM ANY OF THE FOLLOWING DEFENDANTS:**

**BAYER AG, BAYER CORPORATION, BAYER MATERIALSCIENCE AG, BAYER MATERIALSCIENCE LLC (f/k/a BAYER POLYMERS LLC), RHEIN CHEMIE CORPORATION, RHEIN CHEMIE RHEINAU GmbH (“BAYER”); CHEMTURA CORPORATION (f/k/a CROMPTON CORPORATION) AND/OR UNIROYAL CHEMICAL COMPANY, INC. (“CHEMTURA”).**

**A \$15.0 MILLION SETTLEMENT WITH CHEMTURA HAS BEEN PROPOSED IN THIS CLASS ACTION LITIGATION THAT MAY AFFECT YOUR RIGHTS. IF YOU ARE A CLASS MEMBER WITH QUALIFIED PURCHASES, YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT FUND.**

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.**

**I. NOTICE OF PROPOSED CHEMTURA SETTLEMENT**

**NOTICE IS HEREBY GIVEN,** pursuant to Rule 23 of the Federal Rules of Civil Procedure

and an Order of the United States District Court for the District of Kansas dated October 24, 2007, that a Fairness Hearing will be held on February 25, 2008 at 10:30 a.m., before the Honorable John W. Lungstrum, United States District Judge, in Courtroom No. 427, United States Courthouse, 500 State Avenue, Kansas City, Kansas 66101, for the purpose of (1) determining finally whether Plaintiffs' proposed settlement with Chemtura (the "Chemtura Settlement") is fair, reasonable and adequate to the Class; (2) considering Class Counsel's application for an award of attorneys' fees (not to exceed 30% of all settlement proceeds, plus interest) and reimbursement of costs and expenses; (3) considering payment of incentive awards to Class Plaintiffs; and (4) considering Class Counsel's proposed Plan of Allocation of settlement proceeds.

**IF THE CHEMTURA SETTLEMENT IS APPROVED BY THE COURT AND YOU ARE A CLASS MEMBER, YOU WILL NEED TO COMPLETE AND SUBMIT THE ENCLOSED CLAIM FORM TO SHARE IN THE SETTLEMENT FUND. YOU WILL BE LEGALLY BOUND BY THE SETTLEMENT, AND YOU WILL NOT BE ABLE TO SUE OR CONTINUE TO SUE CHEMTURA OVER THE LEGAL CLAIMS IN THIS CASE.**

**A. BACKGROUND OF THE CLASS ACTION**

In 2004, Plaintiffs Skypark Manufacturing LLC (f/k/a Burtin Urethane Corporation), Maine Industrial Tires Limited, and Urethane Product Industries, Inc., filed suit against Defendants Bayer and Chemtura. Plaintiffs allege that the Defendants unlawfully agreed to fix, raise, maintain or stabilize prices and/or allocate markets for Polyester Polyol Products sold in the United States during the period from January 1, 1998 to the present, in violation of the federal antitrust laws, namely, Section 1 of the Sherman Act, 15 U.S.C. § 1. Plaintiffs claim that, as a result of these alleged violations of the antitrust laws, they and other Class Members paid more for the Polyester Polyol Products than they would have paid absent such wrongful conduct.

On August 16, 2006, the Court certified the following Class:

All direct purchasers (excluding governmental entities and excluding

Defendants and their present and former parents, predecessors, subsidiaries and affiliates) of aliphatic polyester polyols, aliphatic polyester polymers and prepolymers, and aliphatic polyester-based polyurethane systems in the United States from any of the Defendants, or any present or former parent, subsidiary or affiliate thereof, at any time during the period from January 1, 1998 to the present.

Also excluded are those persons and entities who timely and validly requested exclusion from the Class. The Court also approved appointment of the Plaintiffs and Class Counsel to represent the interests of the Class. Plaintiffs mailed individual notice of the class certification to all known Class Members and published a summary notice in *Chemical Week*.

On October 17, 2006, after a fairness hearing, the Court approved a settlement between Plaintiffs and Bayer (the “Bayer Settlement”), pursuant to which Bayer paid \$18 million into an interest-bearing escrow account (the “Bayer Settlement Fund”) for the benefit of the Class. Pursuant to the Bayer Settlement, the Court dismissed claims by Plaintiffs and all Class Members against Bayer, finding that “[t]he settlement was fairly and honestly negotiated. It resulted from vigorous arm’s-length negotiations which were undertaken in good faith by counsel with significant experience litigating antitrust class actions.” If you are a qualified Bayer Settlement Class Member, your claims against Bayer were previously released. Plaintiffs mailed individual notice of the Bayer Settlement to all known Class Members and published a summary notice of the Bayer Settlement in *Chemical Week*.

On behalf of the Class, Plaintiffs have now entered into a proposed settlement with Chemtura. The Chemtura Settlement Agreement is subject to final approval by the Court following the February 25, 2008 Fairness Hearing described in the first paragraph of this Notice.

**THE COURT HAS NOT RULED ON ANY OF THE CLAIMS OR DEFENSES OF THE PARTIES. THIS NOTICE IS NOT TO BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES ASSERTED BY PLAINTIFFS OR DEFENDANTS.**

**B. WORK BY CLASS COUNSEL LEADING TO THE CHEMTURA SETTLEMENT**

Class Counsel have vigorously litigated this lawsuit. As part of their representation, Class Counsel obtained class certification; obtained proffers of evidence from both Bayer and Chemtura; and engaged in comprehensive merits discovery. Class Counsel analyzed more than one million documents produced by Defendants and third parties, took depositions of Defendants, and propounded and responded to numerous discovery requests.

Based upon Class Counsel's comprehensive prosecution of the case against all Defendants, their evaluation of the claims of the Class Members and defenses that might be asserted, and the expense and length of continued proceedings to prosecute the action through trial and appeal, Class Counsel believe that the Chemtura Settlement is fair, reasonable and adequate and in the best interests of the Class. Class Counsel will request the Court to enter an Order finally approving the Chemtura Settlement at the February 25, 2008 Fairness Hearing described above.

**C. THE PROPOSED CHEMTURA SETTLEMENT**

The following description of the proposed Chemtura Settlement is only a summary. You may obtain a copy of the Chemtura Settlement Agreement from any of the Class Counsel listed on the last page of this Notice.

## **1. The Chemtura Settlement Fund**

Subject to the terms of the Settlement Agreement, Chemtura has made a cash payment of \$15.0 million into an escrow account (the “Chemtura Settlement Fund”), which is accruing interest for the benefit of the Class. Pursuant to the Chemtura Settlement Agreement, disbursements may be made from the Chemtura Settlement Fund to pay, on an interim basis, reasonable notice and administration costs and tax expenses.

## **2. Release of Claims**

### **(A) Release of Claims against Chemtura<sup>1</sup>**

If, following the Fairness Hearing, the Court approves the Chemtura Settlement Agreement and that approval either is not challenged or, if challenged, is affirmed, the Chemtura Settlement Agreement will become final (the “Effective Date”). On the Effective Date, each Class Member that has not previously, timely and validly excluded itself from the Class (the “Releasers”) shall have completely released and forever discharged Chemtura and their respective past and present parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, servants, representatives (and the parents’, subsidiaries’, and affiliates’ past and present officers, directors, employees, agents, attorneys, servants, and representatives), and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing (the “Releasees”) from any and all claims, demands, actions, suits, and causes of action, whether class, individual, or otherwise in nature, that Releasers, or any of them, ever had, now have, or hereafter can, shall, or may have against Releasees, whether known or unknown, asserted or unasserted, on account of or arising out of, resulting from, or related in any respect to, the pricing, selling, discounting, marketing, manufacturing and/or distributing of the Polyester Polyol Products in the United States prior to the Effective Date, and includes without

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<sup>1</sup> If you are a qualified Bayer Settlement Class Member, your claims against Bayer were previously released, as described in Section I.A. on page 3 of this Notice.

limitation claims alleged, or which could have been alleged, in this Action arising under federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, or civil conspiracy law, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.* (“Released Claims”). The Released Claims include claims related to or arising out of the facts, occurrences, transactions, or other matters alleged in the Second Amended Consolidated Class Action Complaint during the Class Period. However, this release shall not affect the rights of any Class Member (i) to pursue claims relative to any product defect, breach of contract, or similar claim against Chemtura relating to the Polyester Polyol Products; or (ii) to participate in or benefit from any relief or other recovery as part of a settlement or judgment on behalf of a class of indirect purchasers of the Polyester Polyol Products. Releasors shall not, after the Effective Date, seek to recover against any of the Releasees for any of the Released Claims.

**(B) Release of Claims by Chemtura**

On the Effective Date, the Releasors shall be completely released, acquitted and discharged from any and all claims, demands, actions, suits and causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties, and attorneys’ fees that Releasees ever had, whether known or unknown, relating in any way to the institution, prosecution, or assertion of the litigation or the Released Claims.

**D. ATTORNEYS’ FEES AND EXPENSES, INCENTIVE AWARDS, AND PLAN OF ALLOCATION.**

The Court has appointed Class Counsel to represent you and other Class Members. You will not be charged for these lawyers. To date Class Counsel have not received any payment for their services in conducting this litigation on behalf of the Plaintiffs and the Class Members, and they have not been reimbursed for their out-of-pocket expenses. At the Fairness Hearing, Class Counsel will petition for payment of attorneys’ fees not to exceed 30% of all settlement proceeds paid by Bayer and Chemtura,

plus interest, and for reimbursement of costs and expenses incurred in their prosecution of this litigation in an amount not to exceed \$2 million. If the Court approves Class Counsel's petition, their fees and expenses will be paid from the Bayer and Chemtura Settlement Funds.

In addition, Class Counsel will petition the Court to obtain incentive awards for each of the Class Plaintiffs, not to exceed \$10,000.00 per Class Plaintiff, in recognition of the risks, time and expenses incurred in connection with this litigation.

Class Plaintiffs will also petition the court for approval of a Plan of Allocation, as described in Section II below.

#### **E. THE RIGHTS OF CLASS MEMBERS**

You have the following options:

(A) If you want to participate in and make a claim for compensation from the Chemtura and Bayer Settlements, you must file a claim form (see Section III below). If your claim is timely and valid, and if the Court approves the Chemtura Settlement, you will, pursuant to Section II below, share in the proceeds of the Bayer and Chemtura Settlement Funds.

(B) You may do nothing at all. If you choose this option, you will not receive any money from the Bayer or Chemtura Settlement Funds. However, you will be bound by any judgment entered by the Court, and you will not be able to start or continue with a lawsuit against Bayer or Chemtura regarding the Released Claims.

(C) You may object to the Chemtura Settlement Agreement, the proposed request for attorneys' fees and expenses, the proposed incentive awards, and the proposed Plan of Allocation. Objections must be in writing and submitted to the Court as set forth in Section III. (The time to object to the Bayer Settlement has expired.)

(D) You may retain individual counsel at your own expense or appear on your own. You may enter an individual appearance in the litigation or have your counsel enter an appearance on your behalf.

## **II. PLAN OF ALLOCATION OF THE CHEMTURA SETTLEMENT AND BAYER SETTLEMENT FUNDS**

If the Court approves the Chemtura Settlement, the Net Settlement Fund (the proceeds remaining in the Chemtura and Bayer Settlement Funds after payment of all fees and expenses awarded by the Court) will be distributed to Class Members who submit their claim form in accordance with Section III and who have qualified claims. The Court may approve or reject, in full or in part, any individual claim of a Class Member based on equitable grounds.

The Net Settlement Fund will be distributed on a *pro rata* basis among those Class Members who timely and properly file a Proof of Claim. Each claimant's *pro rata* share will be based on the dollar amount of its purchases of Polyester Polyol Products during the Class Period (a list of the trade names of the Polyester Polyol Products is attached to this Notice as Attachment A) from all Defendants. Purchases must have been made directly from one or more Defendants during the Class Period to qualify.

Based on purchase data provided by Chemtura and Bayer, each claimant's claim form has been pre-filled with the total net purchase amounts, separated by year (net of freight charges, discounts, etc.) of Polyester Polyol Products that claimant purchased from Chemtura and Bayer, respectively. The amount(s) listed, together with the years the claimant purchased Polyester Polyol Products, will be used to determine the claimant's net purchases throughout the Class Period and accordingly, the claimant's *pro rata* share of the net settlement fund.

Please note that the purchase data listed in the pre-filled claim form were derived from

information Plaintiffs received from Bayer and Chemtura. Bayer was unable to provide Plaintiffs with purchase data from January 2, 2006 through August 16, 2006. Chemtura was unable to provide Plaintiffs with Fomrez purchase data from January 1, 1998 through September 30, 1999. Accordingly, if you purchased polyester polyol products from Bayer from January 2, 2006 through August 16, 2006 and/or if you purchased Fomrez products from Chemtura from January 1, 1998 through September 30, 1999, you may supplement your claim by listing the purchases in the chart below and submitting (with this claim form) proof of purchases (such as invoices, purchase orders, cancelled checks, etc.). Additionally, if you believe that any of the purchase data listed in your pre-filled claim form are incorrect, you may list your purchases by year and by defendant and provide proof of purchases (such as invoices, purchase orders, cancelled checks, etc.).

If you previously filed a valid and timely request for exclusion from the Bayer Settlement with the Court, then you will only be able to recover your *pro rata* share of the Chemtura Settlement Fund. All other claimants will be able to recover their *pro rata* share of the Net Settlement Fund.

The alleged overcharge is only a portion of the price you paid for the applicable products. Your recovery will be less than the total amount that you paid for the products.

### **III. SUBMISSION OF CLAIM FORMS**

You need to submit a claim if: (1) you wish to share in the proceeds of the Chemtura Settlement Fund and you previously have not excluded yourself from the Class; and/or (2) you wish to share in the proceeds of the Bayer Settlement Fund and you previously have not excluded yourself from the Bayer Settlement Class. To submit a claim, please complete, sign and return the enclosed Proof of Claim form. It must be postmarked no later than March 21, 2008 and mailed to:

*Urethane Antitrust Litigation – Polyester Polyol Cases*  
c/o Complete Claim Solutions, LLC  
P.O. Box 24707  
West Palm Beach, Florida 33416

YOU MUST SUBMIT A PROOF OF CLAIM FORM IN ORDER TO CLAIM AND RECEIVE  
A PORTION OF THE CHEMTURA SETTLEMENT FUND AND/OR THE BAYER  
SETTLEMENT FUND.

**IV. FAIRNESS HEARING**

At the Fairness Hearing, the Court will consider whether the Chemtura Settlement should be finally approved as fair, adequate and reasonable to the Class and whether the claims of the Class against Chemtura should be dismissed with prejudice; and whether to approve Class Counsel's petition for attorneys' fees and expenses, incentive awards, and proposed Plan of Allocation.

You do not need to appear at that hearing. However, any Class Member who has submitted written objections may appear and be heard at the Fairness Hearing. Any Class Member may appear on its own, or may enter an appearance through counsel of such member's own choosing and at such member's own expense.

Any Class Member may object to the Chemtura Settlement, Class Counsel's application for an award of attorneys' fees, Class Counsel's proposed incentive awards to Class Plaintiffs, and Class Counsel's proposed Plan of Allocation. Any such objections must be filed in writing with the Clerk, United States District Court for the District of Kansas, 500 State Avenue, Kansas City, Kansas 66101, no later than January 22, 2008, with copies served upon the counsel identified below:

Susan G. Kupfer Glancy Binkow & Goldberg LLP One Embarcadero Center, Suite 760 San Francisco, CA 94111	Steven A. Kanner Freed Kanner London & Millen LLC 2201 Waukegan Road, Suite 130 Bannockburn, IL 60015	Ian Simmons O'Melveny & Myers, LLP 1625 I Street, NW Washington, D.C. 20004  Counsel for Chemtura
Roy M. Bell Jason S. Hartley Ross Dixon Bell 550 West B Street, Suite 400 San Diego, CA 92101 Plaintiffs' Class Counsel	W. Joseph Bruckner Lockridge Grindal Nauen PLLP Suite 2200 100 Washington Avenue South Minneapolis, MN 55401  Plaintiffs' Class Counsel	

The time and date of the hearing may be continued. Notice of any such continuance shall be set forth on the Court's docket.

**V. ADDITIONAL INFORMATION**

**THE ABOVE IS ONLY A SUMMARY OF THE CHEMTURA SETTLEMENT AGREEMENT AND RELATED MATTERS**

To obtain a copy of the August 2, 2007 Chemtura Settlement Agreement, contact Class Counsel listed above and on the last page of this Notice. If you want more detailed information concerning the matters involved in the litigation, you may review the pleadings, the Chemtura Settlement Agreement, the Bayer Settlement Agreement, and the Orders entered by the Court. These and other papers filed in the litigation may be inspected at the Office of the Clerk of the United States District Court for the District of Kansas, 500 State Avenue, Suite 517, Kansas City, Kansas 66101, during regular business hours.

**A LIST OF THE TRADE NAMES UNDER WHICH CHEMTURA AND BAYER SOLD THE POLYESTER POLYOL PRODUCTS IS ATTACHED TO THIS NOTICE AS ATTACHMENT A.**

**ALL INQUIRIES CONCERNING THIS NOTICE AND THE CHEMTURA SETTLEMENT AGREEMENT SHOULD BE DIRECTED TO CLASS COUNSEL, OR THE CLAIMS ADMINISTRATOR AT THE ADDRESSES SET FORTH BELOW:**

Susan G. Kupfer  
Glancy Binkow & Goldberg  
LLP  
One Embarcadero Center, Suite  
760  
San Francisco, CA 94111

Steven A. Kanner  
Freed Kanner London &  
Millen LLC  
2201 Waukegan Road, Suite  
130  
Bannockburn, IL 60015

Urethane Antitrust Litigation  
Polyester Polyol Cases  
Complete Claim Solutions, Inc.  
P.O. Box 24707  
West Palm Beach, FL 33416

Claims Administrator

Roy M. Bell  
Jason S. Hartley  
Ross Dixon Bell  
550 West B Street, Suite 400  
San Diego, CA 92101

W. Joseph Bruckner  
Lockridge Grindal Nauen  
PLLP  
Suite 2200  
100 Washington Avenue South

Minneapolis, MN 55401

Class Counsel for Plaintiffs

INQUIRIES SHOULD NOT BE DIRECTED TO BAYER, CHEMTURA, THE COURT,  
OR THE CLERK'S OFFICE.

*BY ORDER OF THE COURT:*

*DATED: October 25, 2007*

*HON. JOHN W. LUNGSTRUM, U.S. DISTRICT JUDGE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS*